

REMARKS/ARGUMENTS

Claims 1, 2, 4-13 and 21-24 are in the case. No claim amendments are presented.

Claims 1, 2 and 4-13 stand rejected on obviousness-type double patenting grounds as allegedly unpatentable over claims 1-4, 8, 9 and 12 of U.S. Patent 6,716,834. That rejection is respectfully traversed.

As previously argued, clear distinctions exist between the claims of the '834 U.S. patent and the claims under consideration in the present application. In particular, as noted in the prior Amendment, the claims of the '834 US patent require that the 6-position of the thiochromane ring bears an essential halo substituent (R¹). The presence of a halo substituent in the present case is merely optional, not required as in the claims of the '834 US patent. Moreover, the priority date of the '834 US patent is May 16, 2000, which is subsequent to that of the present application (which has a priority date of December 14, 1998). In granting the '834 US patent, the Office has already determined that the claims of the '843 US patent are patentably distinct over the claims of the current application (i.e., the claims of the '834 US patent constitute a selection invention over the disclosure of the present application). It is therefore not seen how the Office can now find that no patentable distinction between the claims of the present application and the claims of US '834, since this would be inconsistent with the Office's finding in relation to the '834 US patent (where no terminal disclaimer was filed), and would ignore the distinction (broad genus vs. narrow selection) that is evident between the two sets of claims.

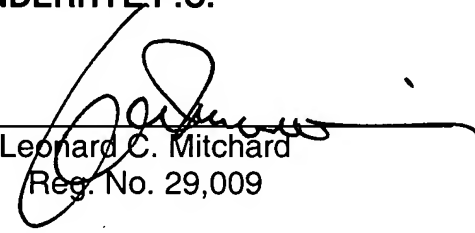
In light of the above, it is clear that the claims of the present application are not suggested in any way by the claims of the '834 US patent. No obviousness-type double patenting therefore exists as between the present claims and those of the '834 US patent. Withdrawal of the outstanding obviousness-type double patenting rejection is respectfully requested.

Favorable action is awaited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Leonard C. Mitchard
Reg. No. 29,009

LCM:lfm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100